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No. 736

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Supreme Court of the United States.

OCTOBER TERM, 1945.

JOHN D. LYON,
Petitioner,

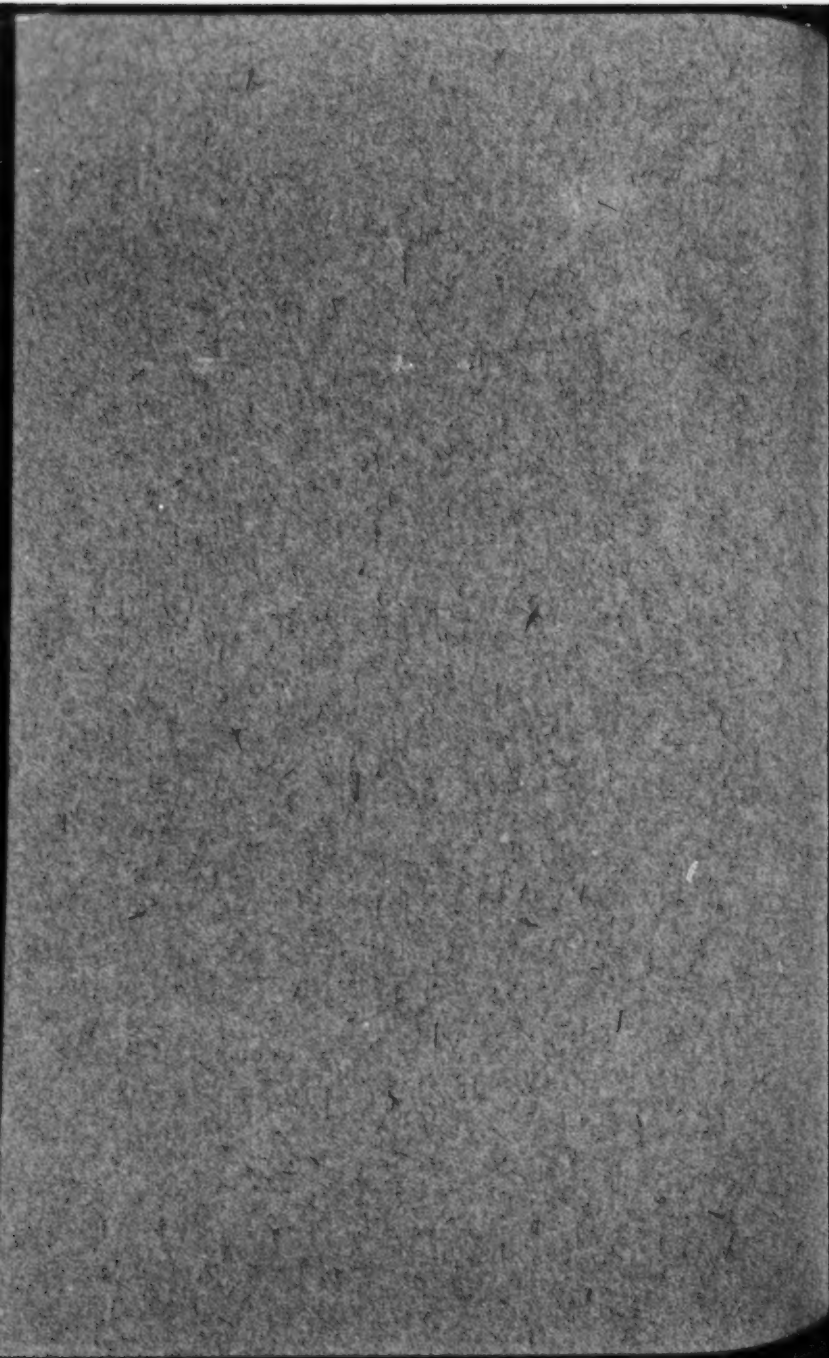
v.

JEROME K. HARKNESS,
Respondent.

PETITION FOR WRIT OF CERTIORARI
AND
BRIEF IN SUPPORT THEREOF.

SAMUEL A. MARGOLIS,
Attorney for Petitioner.

MACNEIL AND MALONEY,
ANGUS M. MACNEIL,
Of Counsel.



Subject Index.

	Page
Petition	1
1. Statement of matter involved	1
2. Jurisdiction	4
3. Questions presented	4
4. Reasons relied on for allowance of writ	7
5. Prayer for writ	9
Brief	10
Opinions below	10
Jurisdiction	10
Statement of facts	11
Specification of errors	11
Argument	11
Conclusion	14

Table of Authorities Cited.

CASES.

Barry v. Sparks, 306 Mass. 80	12
Esenwein v. Commonwealth, ex rel. Esenwine, 325 U.S. 279	13
Hard v. Splaine, 45 D.C. Apps. 1	13
Hyatt v. People of the State of New York, 188 U.S. 691	13
Innes v. Tobin, 240 U.S. 127	13
Lascelles v. Georgia, 148 U.S. 537	12
Lyon v. Lyon, 1945 Mass. Adv. Sh. 1087; 63 N.E. (2d) 459	12
Montgomery, ex parte, 244 Fed. 967	13
Rhode Island v. Massachusetts, 12 Pet. 657	12
Robb v. Connolly, 111 U.S. 624	12
Roberts v. Reilly, 116 U.S. 80	12

STATUTES.

	Page
U.S. Constitution, art. 1, sec. 10	12
U.S. Constitution, art. 4, sec. 1	13
Judicial Code as amended, sec. 240(a); 28 U.S.C. 347(a)	11
28 U.S.C. 451	11

TEXTBOOK.

Report on Criminal Remedies in Massachusetts for Failure to Furnish Support	12
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PETITION FOR WRIT OF CERTIORARI.

*To the Honorable the Chief Justice of the United States
and the Associate Justices of the Supreme Court of the
United States:*

Your petitioner respectfully submits his petition for a writ of certiorari to review the decision of the Circuit Court of Appeals for the First Circuit in the above-entitled case, numbered 4078 in the October, 1944, Term of said Court.

1. Statement of Matter Involved.

The petitioner, John D. Lyon, is a citizen and domiciliary of the State of Nevada prior to January of 1944. He was lawfully married to Marjorie S. Lyon, a domiciliary and resident of the Commonwealth of Massachusetts. On the 10th day of January, 1944, said John D. Lyon was divorced from said Marjorie S. Lyon by a decree entered in the

Eighth Judicial District Court of the State of Nevada in and for the County of Clark, a court of competent jurisdiction. Marjorie M. Lyon had previously been served with summons in said case in accordance with the laws of the State of Nevada, service having been made upon her in person (see transcript of record, page 30).

The judgment of divorce contained an order for the support of the children of said John D. Lyon and Marjorie M. Lyon.

On the 18th day of October, 1943, Marjorie S. Lyon otherwise known as Marjorie M. Lyon, filed a libel in the Probate Court in and for the County of Middlesex, Commonwealth of Massachusetts, seeking a divorce from John D. Lyon, the petitioner. On November 29, 1943, custody of the children of Marjorie S. Lyon and John D. Lyon was awarded to Marjorie S. Lyon by decree of the Probate Court of Middlesex County, Commonwealth of Massachusetts (see record, page 45).

Then, on February 11, 1944, the judge of the Probate Court for the Commonwealth of Massachusetts, Middlesex County, entered an order against John D. Lyon in the amount of \$35, to be paid each and every Saturday thereafter. No personal service of said divorce proceedings commenced in the Commonwealth of Massachusetts has been served upon John D. Lyon within the Commonwealth of Massachusetts.

John D. Lyon has faithfully complied with the terms of the order entered on January 10, 1944, in the Nevada court.

According to the record, John D. Lyon was not physically present within the Commonwealth of Massachusetts on or after the 12th day of January, 1944, the date alleged in the indictments (see transcript of record, page 5, par. 8, and the return to the writ, page 48).

On April 5, 1944, the Grand Jury of Middlesex County returned an indictment against John D. Lyon setting forth

substantially that he was criminally guilty of nonsupport, desertion, and abandonment of Marjorie S. Lyon and his children, John D. Lyon II and Stephanie Lyon, from January 20, 1944, until the date of the indictment, April 5, 1944 (see transcript of record, page 17).

Thereafter rendition proceedings, sometimes called extradition proceedings, were commenced in the Commonwealth of Massachusetts, and on the 29th day of December, 1944, the Governor of New Hampshire honored the request of the Governor of Massachusetts and ordered the warrant to be issued that would cause your petitioner to be delivered to the Commonwealth of Massachusetts or its agents.

On January 19, 1945, John D. Lyon applied to the Honorable Aloysius J. Connor, judge of the United States District Court for the District of New Hampshire, for a writ of habeas corpus. This writ was returnable to the United States District Court for the District of New Hampshire on January 19, 1945. A hearing was held on January 24, 1945 (the full transcript of the hearing being set forth in the record, starting at page 60).

On January 24th Judge Connor, without receiving evidence but upon reading the writ of habeas corpus, the petition for the writ, the return to the writ, and a motion filed by the petitioner, and argument of counsel (all of which are completely set forth in the transcript of record), ordered that the writ be discharged and the petitioner remanded to the custody of the respondent.

On January 25, 1945, the court filed his opinion with findings of fact. (This opinion is short and is set forth on page 53 of the transcript of record.) The opinion of the court contained the following statement: "It is a further finding of the Court that there existed no exceptional circumstances or peculiar urgency which would justify a departure from the rule requiring recourse to the state courts."

The case was appealed to the United States Circuit Court of Appeals for the First Circuit, and the court entered a judgment sustaining or affirming the order of the District Court on November 9, 1945 (as set forth on page 100 of the transcript of record); and on the same day it entered an opinion which contained the following statement: "Federal jurisdiction is just as delicate and interferes just as much with the criminal jurisdiction of the several states in one situation as it does in the other" (see transcript of record, page 100).

2. Jurisdiction.

The jurisdiction of the United States Supreme Court is given by 28 U.S.C. sections 451 and 452, and the petitioner here is held in custody, and he alleges he is being so held in violation of rights given to him by the Federal Constitution. The petitioner contends that the Circuit Court of Appeals—

1. Decided this case in conflict with other decisions of the United States Supreme Court and in conflict with applicable decisions of other Federal Courts.
2. Decided an important question of Federal law which has not been, but should be, settled by this court.
3. Decided this question in violation of the provisions of the Constitution of the United States.

3. Questions Presented.

The petitioner presents the following questions:

1. That in a case of the nature of that presented to the District Court of the United States for the District of New Hampshire in the case of *John D. Lyon v. Jerome K. Harkness* the petitioner has a right to have his case heard and disposed of on its merits by a court of the United States.

2. That no state executive or judicial department of a state should be empowered or trusted with the duty of determining the question of the validity of divorce proceedings in which the state, its citizens or inhabitants are not parties at interest.

3. That the State of New Hampshire has no authority in itself to hold John D. Lyon or deliver him to the Commonwealth of Massachusetts by its own authority, but can only act in rendition proceedings under the authority granted by the Constitution of the United States and the Acts of Congress.

4. That no rule of court exists such as set forth in the opinion of the judge of the District Court of New Hampshire (as set forth on page 55 of the transcript of record, line 1, or as set forth in the opinion of the Circuit Court of Appeals for the First Circuit, as contained in the transcript of record, pages 97 to 100, inclusive).

5. That the petitioner is not substantially charged with a crime cognizable under the laws of Massachusetts.

6. That the petitioner is not a fugitive from justice.

7. That the applicant has a full and complete remedy in the Federal courts for habeas corpus in this case and is not obliged to proceed to protect his rights before a New Hampshire court of record.

8. That there is no requirement that the applicant exhaust his remedies in the New Hampshire state courts before applying for habeas corpus to the Federal courts.

9. That the Governor of the State of New Hampshire and the Federal District Court of New Hampshire had no duty to inquire into the validity of the divorce decree set up in the pleadings, but were obliged by United States law to give full faith and credit to this decree without further inquiry into the matters decided by the courts of the State of Nevada.

10. That the Federal courts could not validly and legally state, in view of the Massachusetts laws, that John D. Lyon would have an opportunity to compel recognition of his constitutional rights in Massachusetts before the Massachusetts courts.

11. That in this proceeding there are substantial Federal Constitutional questions involved.

12. That the alleged act with which the applicant is charged is not a crime under the Massachusetts laws.

13. That, if proved as alleged that John D. Lyon was not within the Commonwealth of Massachusetts at the times alleged in the indictment even if a crime were alleged, he could not be extradited or be the subject of rendition from New Hampshire to Massachusetts in accordance with proceedings upon which this case is based.

14. That, if the facts alleged by John D. Lyon in his application for a writ of habeas corpus are sustained, a writ of habeas corpus must issue and must be sustained.

15. That the respondent has not denied in his return to the writ allegations which would prevent John D. Lyon from maintaining his application for a writ of habeas corpus.

16. That John D. Lyon's right to a writ of habeas corpus arises from the Constitution of the United States and is not dependent upon the statutes of the State of New Hampshire.

17. That, the respondent not having denied the fact alleged by the applicant that the applicant was not within the State of Massachusetts and did not leave the State of Massachusetts within the times set forth in the indictment, he is therefore not a fugitive from justice, and therefore is entitled to have a writ of habeas corpus issued and sustained.

18. That John D. Lyon is entitled to have the Federal courts determine the essential allegations made by him in

his petition for a writ of habeas corpus if any of the essential facts are denied by the respondent in his return.

19. That the criminal courts of Massachusetts have no authority to enforce the orders of the Probate Courts of Massachusetts in so far as they affect this case, nor do the criminal courts of Massachusetts have any jurisdiction or authority to enforce the orders contained in the judgment of divorce entered in the judgment referred to from the Nevada Courts.

4. Reasons Relied on for Allowance of Writ.

The petitioner sets forth the following reasons for the allowance of the writ:

1. The action of the judge of the District Court and the action of the Circuit Court of Appeals in dismissing the writ of habeas corpus are a direct violation of the Constitution of the United States guaranteeing to all citizens of the United States freedom and liberty. The District Court erred when it entered his order upon his opinion that there existed a rule requiring recourse in this type of action to the state court.

2. The judge of the District Court and the Circuit Court of Appeals erred in considering the case as being one in which the petitioner is being held by state authority (see transcript of record, page 99, par. 3).

3. The return of a fugitive from one state to another is governed by the Constitution of the United States and the Acts of Congress past pursuant thereto. The Constitution of the United States, article 4, section 2, clause 2, and the statutory laws of the United States govern exclusively the rights of one state to demand and the obligation of another state upon demand made to surrender fugitives. Article 1, section 10, of the Constitution of the United States removes any rights of the several states to make treaties or agree-

ments amongst themselves, and the only authority under which a fugitive from justice may be held is the authority of the United States.

4. The laws of the Commonwealth of Massachusetts recognize no crime of nonsupport, desertion or abandonment of wife or minor children in cases in which divorce proceedings have been commenced and custody of children has been awarded and orders for support have been entered in the Probate Court of Massachusetts.

5. The Governor and the Executive Department of the Commonwealth of Massachusetts, in the absence of evidence to the contrary, are obliged to give full faith and credit to the judicial decree of the courts of the State of Nevada in the action of *John D. Lyon v. Marjorie M. Lyon*.

6. The Governor of the State of New Hampshire, under the laws of the United States and under the laws of the State of New Hampshire, cannot inquire into the validity of the decree of the court of the State of Nevada, and cannot take evidence upon which he can base his action or his opinion concerning the validity of the judgment issued from the state court of Nevada.

7. As between an indictment returned from the state courts of Massachusetts and a judgment entered in the state courts of Nevada, the Governor of New Hampshire must give full faith and credit to the judgment of the state court of Nevada, and, as necessary to give such full faith and credit, must disregard the alleged indictment returned by the state court of Massachusetts.

8. The Governor of New Hampshire, having the knowledge that John D. Lyon was not within the Commonwealth of Massachusetts on the alleged date of the commission of the alleged crime or thereafter, was obliged to recognize that John D. Lyon was not a fugitive from justice.

9. John D. Lyon, having legally absented himself from Massachusetts, is entitled, under the Constitution of the

United States, to live free from any obligation of returning to Massachusetts.

10. The United States Circuit Court of Appeals and the District Court of the United States for the District of New Hampshire have erroneously considered that a person held under a Governor's warrant in rendition proceedings is held by state authority and becomes subject to the rule of court that applies to the interference of Federal courts when a person is held by state court authority as such.

5. Prayer for Writ.

Wherefore your petitioner respectfully prays:

1. That a writ of certiorari issue out of and under the seal of this Honorable Court to review the decision of the Circuit Court of Appeals for the First Circuit in the above case.

2. That the judgment of the Circuit Court of Appeals for the First Circuit in the above case be vacated.

3. That the Circuit Court of Appeals for the First Circuit be directed to issue and sustain the petitioner's petition for a writ of habeas corpus.

3. That a writ of certiorari issue and that he be allowed to have the Supreme Court of the United States pass upon his right to have issued a writ of habeas corpus protecting him from delivery to the Commonwealth of Massachusetts.

5. For such other and further relief in the premises as to this Honorable Court may seem proper.

JOHN D. LYON,

By his Attorney,

SAMUEL A. MARGOLIS.

MACNEIL AND MALONEY,

ANGUS M. MACNEIL,

Of Counsel.